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*Kevin Smith*

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ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
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**IN THE  
COURT OF APPEALS OF INDIANA**

KEITH D. OWENS, )  
 )  
 Appellant-Defendant, )  
 )  
 vs. ) No. 18A02-0802-CR-182  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Plaintiff. )

APPEAL FROM THE DELAWARE CIRCUIT COURT  
The Honorable Marianne Vorhees, Judge  
Cause No. 18C01-0708-FC-34

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Keith D. Owens appeals the four-year executed sentence that was imposed following his guilty plea to Carrying a Handgun Without a License,<sup>1</sup> a class C felony. Specifically, Owens claims that his sentence is inappropriate in light of the nature of the offense and his character because the trial court should have permitted him to serve a portion of the sentence on probation. Finding no error, we affirm the judgment of the trial court.

### FACTS

On August 10, 2007, Owens took his neighbor's handgun and fired it several times while standing within 1000 feet of an elementary school in Delaware County. As a result of the incident, the State charged Owens with carrying a handgun without a license, a class C felony, criminal recklessness, a class D felony, and receiving stolen property, a class D felony.

On December 13, 2007, Owens negotiated a plea agreement with the State, which provided that Owens would plead guilty to the handgun charge in exchange for the dismissal of the remaining charges. The plea agreement also provided that the sentence would be “capped” at four years. Appellant's App. p. 18.

On February 11, 2008, the trial court conducted a sentencing hearing and identified the following aggravating circumstances: (1) Owens's juvenile and criminal history, which included four juvenile adjudications for burglary; (2) Owens was on probation for the offense of sexual misconduct with a minor when he committed the

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<sup>1</sup> Ind. Code §§ 35-47-2-1, -23 (c)(1).

instant offenses; and (3) Owens did not take advantage of the opportunity to rehabilitate himself even though he had been placed on probation several times.

The trial court identified Owens's decision to plead guilty as a mitigating circumstance but afforded it only minimal weight because of the substantial benefit that he received from the plea agreement. The trial court also found that Owens's show of remorse and support from his family were mitigating circumstances, but those factors were also given only minimal weight because Owens has not rehabilitated himself and has always received support from family members.

The trial court rejected Owens's request for a "split" sentence—a sentence comprised of executed time and probation—concluding that Owens "is not an appropriate candidate for an alternative sentence. Defendant has failed on electronic home detention (he was revoked once and returned); and he failed on supervised probation." Tr. p. 46. The trial court then found that the aggravating circumstances outweighed the mitigators and sentenced Owens to an executed term of four years. Owens now appeals.

### DISCUSSION AND DECISION

In addressing Owens's contention that the sentence is inappropriate, we initially observe that sentencing decisions are within the trial court's discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), reh'g granted on other grounds, 875 N.E.2d 218 (Ind. 2007). As long as the sentence imposed is within the statutory range, the trial court's sentencing determination will be reversed only for an abuse of discretion. Id. An abuse of discretion occurs where the trial court's decision is clearly against the logic and

effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. Id.

However, this court has the constitutional authority to revise an otherwise proper sentence where, after due consideration of the trial court's sentencing determination, we find that the sentence imposed is inappropriate in light of the nature of the offense and the defendant's character. Ind. Appellate Rule 7(B). The defendant carries the burden to convince us that the sentence imposed is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Although Owens maintains that the trial court should have ordered him to serve part of his sentence on probation, we note that probation is an alternative to commitment to the Department of Correction (DOC), which is within the trial court's discretion. Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999). Moreover, probation is a "matter of grace" and a "conditional liberty that is a favor, not a right." Id.

Regarding the nature of the offense, the record shows that Owens, a convicted felon, took his neighbor's handgun and discharged it numerous times in close proximity to an elementary school. Tr. p. 7-10. Owens fired the gun around 4:30 p.m. on August 10, 2007, thus placing at risk any number of school employees who may have been preparing for the impending school year. Id. In short, Owens's "nature of the offense" argument does not aid his inappropriateness claim.

As for Owens's character, the record shows that he is a twenty-one-year-old who has amassed a criminal history that includes convictions for marijuana possession, several juvenile adjudications for burglary, and a conviction for sexual misconduct with a minor.

Following the sexual misconduct conviction, Owens violated both home detention and probation when he committed the instant offense. Appellant's App. p. 33, 79. In the three instances when Owens was placed on probation, he failed to avail himself of the opportunity to rehabilitate himself and chose, instead, to commit additional crimes. In essence, Owens's past contacts with the judicial system have not deterred him from criminal activity and Owens's actions evidence his disregard for the law and others. As a result, we do not find Owens's sentence to be inappropriate in light of the nature of the offense and his character.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.